

REMARKS

This is in response to the Office Action of May 10, 2006. In that Office Action, claims 1-4 and 11-21 were rejected under 35 USC 103 as being unpatentable over U.S. Patent No. 4,897,502 to Dorn in view of EP patent 306252 to Thompson.

Claims 1-9 and 11-21 were rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 5,609,263 to Perchepied. With respect to the rejection based on Perchepied, the Examiner also appears to be relying on the above-mentioned Thompson EP patent.

By this Amendment, Claim 1 has been amended to recite, among other things, a closure cap wherein the tamper evident band includes an inner surface including an inwardly extending continuous bead and an outer surface including a smooth, concave grooved and continuous notch. The continuous notch is generally axially oppositely disposed relative to at least a portion of the continuous bead. For the reasons set forth below, Applicants respectfully submit that Claim 1, as amended, and its dependant claims would not have been obvious over the art relied upon by the Office.

With regard to the rejections under 35 USC 103 over Dorn in view of Thompson, the Office, recognizing that Dorn does not disclose a smooth concave grooved notch, cites Thompson for its disclosure of a concave notch. Applicants respectfully submit that Dorn does not, in fact, disclose a notch, either of the angled, cut-out type or the smooth, concave type. Dorn discloses a band that is elongated and thin with an external shoulder indicated by reference number 26. Nowhere, however, does Dorn describe this as a notch in the outer surface of the tamper evident band or even suggest the need or desirability of including a notch.

Quite to the contrary, the structure of Dorn's tamper evident band is such that one would have had no reason to even consider a "notch" and, consequently, would

have had no reason to even look to Thompson or elsewhere for a concave grooved continuous notch. As described above, Dorn discloses a band that is “elongated and is thin enough to flex resiliently when the bead 22 is forced over the annular shoulder of the bottle” (Col. 4, ll 2-4). Thus, Dorn relies on a band that is sufficiently thin to resiliently flex, during application of the closure to the container. The thin cross-section of the elongated band in Dorn, makes it difficult to see how a concave notch could even be introduced into the band of Dorn. Placing a notch in the thin resilient and elongated band of Dorn may in fact be undesirable in that it could affect the tamper-evidencing function of the band by, for example, making it easier to remove the closure without band fracture.

Even if one with knowledge of Dorn would have been motivated to introduce a notch or substitute the elongated and thin tamper band of Dorn with a band having a notch as disclosed in Thompson, one still would not have arrived at the invention of Claim 1, as presently amended. In Thompson, notch 20 is located on the outer surface of the band, but is axially spaced from the bead on the inner surface of the band. Specifically, in the words of Thompson, “groove 20 is formed in the outer surface of the ring at a location axially between the gap 14 and the end surfaces 17 of the protrusions (16)” (Col. 3, ll 9-11) (emphasis added). Accordingly, one looking to replace the thin and elongated band of Dorn with the grooved notch of Thompson would have been motivated to place the notch axially spaced away from the bead of Dorn. Such placement would have been directly at odds with the relative placement of the continuous notch and continuous bead of Claim 1.

Stated differently, there is no suggestion in either Dorn or Thompson that a notch should be located axially opposite to at least a portion of the bead as recited in amended Claim 1. It is well settled that prior art references must be read as a whole

and one cannot pick and choose among individual parts of assorted prior art references to recreate the claimed invention. W.L. Gore & Assoc. v. Garlock, 721 F.2d 1540, 1550-1552 (Fed. Cir. 1984). One cannot pick and choose. A fair reading of Dorn (which does not disclose a notch and does not appreciate the importance of the relative position of the notch to the bead) in combination with Thompson would have more likely suggested to one of ordinary skill that the notch and bead should not be located substantially axially opposite of each other. For this additional reason, the combination of Dorn and Thompson would not have rendered obvious the invention of Claim 1 as amended.

Finally, while Dorn discloses an annular bead, little is said about the bead itself. Claim 1 has been amended to recite a “continuous” bead. In Thompson, however, the so-called protrusions 16 are circumferentially spaced and do not form a continuous bead as required by Claim 1. For this additional reason, Applicants respectfully submit that amended Claim 1, as amended, would not have been obvious in view of Dorn and Thompson.

With regard to the rejections under 35 USC 103 over Perchepied, presumably in combination with Thompson, Applicants respectfully submit that Claim 1, as amended, would likewise not have been obvious over this combination of references.

With Dorn, Applicants respectfully traverse the Office’s interpretation that Perchepied discloses a “notch” “ or “slightly notch [sic]” (Office Action, p. 3). In fact, some of the figures in Perchepied actually show an outer surface profile that is substantially uniform (see, for example, Fig. 2). Moreover, there is simply no discussion, disclosure or suggestion in Perchepied of a notch or the need for a notch on the outer surface of the band.

In addition, Perchepied discloses “triangular reinforcement blocks 25 on the outer surface of the band.” The reinforcement blocks which are spaced around the annular

outer surface of the band suggest that there is no (nor could there be) continuous notch on the outer surface of Perchepied. It is difficult to see how one could incorporate a continuous notch with a band having reinforcement blocks 25 spaced around the band of Perchepied. Thus, whether one were to consider Perchepied alone or in combination with Thompson, he still would not have arrived at a tamper evident band with a continuous notch on the outer surface of the band.

Finally, Perchepied does not disclose a continuous bead as now recited in Claim 1. As shown in Perchepied, the inner surface of the tamper evident band includes "angularly extending ridges 24 disposed around the inner surface of the band." However, as clearly shown in Fig. 1 and Fig. 2, these angularly extending ridges are discontinuous and are unlike the continuous bead recited in Claim 1 of the present application. Combining Perchepied with Thompson would not cure this deficiency because Thompson likewise shows circumferentially spaced axially extending wedge-shaped protrusions 16 on the inner surface of the band. These circumferentially spaced protrusions cannot be considered "a continuous bead."


Applicants have also added a new dependent claim 22 which recites a continuous bead that is "rounded." Both Dorn and Perchepied show sharply angled beads and Perchepied even describes its annular ridge 24 as having a right-triangular section (Col. 3, line 37). Thompson shows a more rounded bead, but suffers from other shortcomings, such that even if Thompson could be combined with either Dorn or Perchepied, one still would not have arrived at the claimed invention for reasons previously stated.

For all of these reasons, Applicants respectfully submit that claims 1-9 and 11-21 would not have been obvious in view of the art cited by the Examiner.

Applicants would very much welcome an opportunity to discuss the prior art and the claims with the Examiner via a telephonic interview. Applicants request that any such interview be conducted prior the next Office Action. Applicants believe that such an interview could be very useful in advancing prosecution of this application.

For the reasons set forth above, Applicants submit that the claims are now in condition for allowance. Reconsideration and allowance of such claims are respectfully requested.

Respectfully submitted,



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